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No. 265

In the Supreme Court of the United States

OCTOBER TERM, 1947

OLIVER H. SWICK,

Petitioner,

vs.

THE GLENN L. MARTIN COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION.

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OPINIONS BELOW.

Swick v. Glenn L. Martin Co., 68 F. Supp. 863 (D. Maryland, Oct. 23, 1946);
Swick v. Glenn L. Martin Co., 160 F. 2d 483 (C.C.A. 4, March 31, 1947).

STATEMENT OF CASE.

Respondent concurs in Petitioner's statements of Matter Involved and Question Presented.

STATUTES INVOLVED.

Chapter 518 of the LAWS OF THE GENERAL ASSEMBLY OF MARYLAND OF 1945:

"AN ACT to add a new section to Article 57 of the Annotated Code of Maryland (1939 Edition), title 'Limitation of Actions', said new section to be known as Section 19 and to follow immediately after Section 18 of said Article, prescribing a period of limitations within which actions for the recovery of wages, overtime compensation, fees and/or penalties may be brought under the Fair Labor Standards Act of 1938, as amended.

"SECTION 1. *Be it enacted by the General Assembly of Maryland,* That a new section be and it is hereby added to Article 57 of the Annotated Code of Maryland (1939 Edition), title 'Limitation of Actions', said new section to be known as Section 19, to follow immediately after Section 18 of said Article, and to read as follows:

"19. All actions brought by or on behalf of any employee or employees for the recovery of unpaid minimum wages, unpaid overtime compensation, fees and/or penalties, as the case may be, under the Fair Labor Standards Act of 1938, as amended, shall be brought within three years from the time such cause or causes of action accrued, unless such Fair Labor Standards Act shall prescribe a different period within which such action or actions may be brought; provided, however, that all such subsisting causes of action which accrued more than two years before June 1, 1945, shall be sued on within one year after June 1, 1945, unless such Fair Labor Standards Act shall provide a different period within which such causes of action may be sued on.

"SEC. 2. *And be it further enacted,* That this Act shall take effect June 1, 1945."

Article 57, Section 1, CODE OF PUBLIC GENERAL LAWS OF MARYLAND (Flack's Ed., 1939):

"All actions of account, actions of *assumpsit*, or on the case, except as hereinafter provided, actions of debt on simple contract, detinue or replevin, all actions for trespass for injuries to real or personal property, all actions for illegal arrest, false imprisonment, or violation of the twenty-third, twenty-sixth, thirty-first and thirty-second articles of the declaration of rights, or any of them, or of the existing, or any future provisions of the code touching the writ of *habeas corpus*, or proceedings thereunder, and all actions, whether of debt, ejectment or of any other description whatsoever, brought to recover rent in arrear, reserved under any form of lease, whether for ninety-nine years renewable forever, or for a greater or lesser period, and all distraints issued to recover such rent shall be commenced, sued or issued within three years from the time the cause of action accrued; and all actions on the case for libel and slander and all actions of assault, battery and wounding, or any of them, within one year from the time the cause of action accrued; this section not to apply to such accounts as concern the trade or merchandise between merchant and merchant, their factors and servants who are not residents within this State."

Article 57, Section 3, CODE OF PUBLIC GENERAL LAWS OF MARYLAND (Flack's Ed. 1939):

"No bill, testamentary, administration or other bond (except sheriffs' and constables' bonds), judgment, recognizance, statute merchant, or of the staple or other specialty whatsoever, except such as shall be taken for the use of the State, shall be good and pleadable, or admitted in evidence against any person in this State after the principal debtor and creditor have been both dead twelve years, or the debt or thing in action is above twelve years' standing; provided, however, that every payment of interest upon any single

bill or other specialty shall suspend the operation of this section as to such bill or specialty for three years after the date of such payment; saving to all persons who shall be under the aforementioned impediments of infancy or insanity of mind the full benefit of all such bills, bonds, judgments, recognizances, statute merchant, or of the staple or other specialties, for the period of six years after the removal of such disability."

ARGUMENT.

I.

THE DECISION BELOW IS LIMITED IN SCOPE AND LACKS THE IMPORTANCE JUSTIFYING REVIEW BY THIS COURT.

The purpose of the petition is to secure review by this court of the decision of the court below sustaining the validity of Chapter 518 of the Acts of 1945 of the General Assembly of Maryland which expressly limited to three years the time during which actions could be brought for the recovery of unpaid minimum wages, overtime compensation, fees and penalties under the Fair Labor Standards Act of 1938.

At the time of the decision below the question was one of some importance. Since Congress had not then acted to impose any limitation on suits brought under the Fair Labor Standards Act, the extent to which State Legislatures might lawfully do so was a matter of general interest. But this situation has been wholly changed as the result of the enactment of the Portal-to-Portal Act of 1947, Public Law 49, 80th Congress, Chapter 52, First Session.

Section 6 of that Act, which became law on May 14, 1947, reads as follows:

> "Any action commenced on or after the date of the enactment of this Act to enforce any cause of action for unpaid minimum wages, unpaid overtime com-

pensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

> "(a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued;
>
> "(b) if the cause of action accrued prior to the date of the enactment of this Act—may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued, or (2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c), every such action shall be forever barred unless commenced within the shorter of such two periods;
>
> "(c) if the cause of action accrued prior to the date of the enactment of this Act, the action shall not be barred by paragraph (b) if it is commenced within one hundred and twenty days after the date of the enactment of this Act unless at the time commenced it is barred by an applicable State statute of limitations."

It is apparent that State statutes of limitation have no further application to causes of action accruing after May 14, 1947. Thus the fate of the Maryland statute can no longer influence the action of any other State legislature. As to causes of action accruing prior to that date where action is begun thereafter, express Congressional sanction is given to the application of State statutes of limitation. Only where action has been commenced prior to May 14, 1947, would the decision below have any bearing and then only in the case of statutes which, like the Maryland Act, established a period identical with that applicable to all other wage claims.

Furthermore, since the decision below, Chapter 518 of the Acts of 1945 has been held by the Circuit Court of Appeals for the Fourth Circuit to have been merely declaratory of pre-existing Maryland law. In *Black v. Roland Electrical Company*, No. 5600, decided August 12, 1947, that Court held that actions under the Fair Labor Standards Act must be commenced within three years by virtue of the provisions of Section 1 of Article 57 of the Code of Public General Laws of Maryland. That statute, as the Court pointed out, is of ancient origin and was originally included in Chapter 23 of the laws of 1715 enacted by the Provincial Assembly of Maryland. The holding of the United States District Court for the District of Maryland in *Bright v. Hobbs*, 56 F. Supp. 723, that actions under the Fair Labor Standards Act might be brought within the twelve year period provided for actions on bonds, judgments, and other specialties by Section 3 of Article 57 of the Code of Public General Laws of Maryland was expressly disapproved. It was this latter holding, following the decision of a Judge of the Baltimore City Court, a court of nisi prius jurisdiction in *Manhoff v. Thomsen-Ellis-Hutton Co.* (Daily Record of Baltimore City, March 17, 1943), which undoubtedly led to the enactment of the Maryland statute now challenged.

Thus the question presented in the petition is no longer of significance, even to Maryland litigants, and its review by this court would serve no useful purpose.

II.

THE DECISION BELOW DOES NOT CONFLICT WITH ANY OTHER FEDERAL CASE.

The petition, by inference at least, asserts that the decision below conflicts with other Federal cases. In support of this contention, the petitioner first cities *Rockton and Rion R. R. v. Davis*, 159 F. 2(d) 29. That was a decision of

the Circuit Court of Appeals for the Fourth Circuit, written by Judge DOBIE, who concurred in the opinion and decision of the case which this Court is now asked to review. Judge SOPER, who wrote the opinion in the case at bar, likewise concurred in the opinion in the *Davis* case.

The distinction between the cases is plain. In the *Davis* case South Carolina undertook to establish a one year statute of limitations for the enforcement of claims relating to wages claimed under a Federal statute, although ordinary wage claims arising in South Carolina would not be barred in less than six years under the South Carolina statute of limitations. In the case at bar, the very purpose of the Maryland statute was to insure uniformity in the periods of limitations applicable to wage contract rights whether arising under the laws of Maryland or under the Fair Labor Standards Act.

In the only other case cited by the petitioner, *Kampe v. Michael Yundt Co.*, reported in 12 Labor Cases, 63,500, the Wisconsin Act was found to possess the same defect as the South Carolina statute rejected in the *Davis* case.

District Judge COLEMAN, in his opinion below, discussed other cases dealing with the application of State statutes of limitations to suits under Federal statutes and demonstrated conclusively, as we think, that there is no decision of this or any other Federal court in conflict with the decision below.

III.

THE MARYLAND STATUTE IS CLEARLY VALID.

Even if Chapter 518 of the Acts of 1945 changed the law of limitation applicable to suits under the Fair Labor Standards Act, it was clearly valid. The attack on the statute is sought to be based on the supremacy clause of Article VI of the Constitution and on the equal protection

clause of the Fourteenth Amendment. Neither prevents a State from establishing reasonable periods of limitation for the enforcement of Federal legislation provided that Congress has not acted and that there is no discrimination against claims arising under Federal laws in favor of claims of like character arising under State laws. *Campbell v. Haverhill*, 155 U. S. 610, 615; *Pufahl v. Estate of Parks*, 299 U. S. 217.

In the case last cited a State statute of limitations of one year applicable to suits against executors, was held validly applied to a suit against an executor to enforce a liability created by federal statute. The Court said (page 227):

> "This is not to say that a state may deny all remedy for the substantive right arising out of the Federal statute * * *; it is merely to say that if the state does not discriminate against the receiver's claim in favor of others of equal dignity and like character, there is no warrant for exempting the claim from the effect of local statutes governing procedure or limiting the time for prosecution of action."

It can hardly be argued that a period of three years is in itself unreasonable, apart from any question of discrimination. Section 6 of the Portal-to-Portal Act, *supra*, limits actions under the Fair Labor Standards Act to two years. Nor is one year an unreasonable period of grace within which subsisting causes of action must be brought before the bar of the statute should become effective. Section 6 of the Portal-to-Portal Act, *supra*, provides a 120 day period of grace for bringing suit on accrued causes of action before the bar of that statute of limitations shall apply. Recently it has been decided that a 6 months' period of grace in an Iowa statute applicable to Fair Labor Standard Act suits is sufficient. *Kendall v. Keith Furnace*

Co. (CCA 8), 16 Law Week 2097. Judge COLEMAN observed below that the Suits in Admiralty Act, 46 U.S.C.A. 745, allowed one year for suit on claims existing on the effective date of that Act. Petitioner's Appendix, page 14.

Since the period of limitation provided by Chapter 518 is in itself reasonable, the statute can violate the supremacy clause only if it discriminates against actions under the Fair Labor Standards Act in favor of claims of like character arising under State laws. This is only to say that the legislature, in classing such actions with those limited to three years under Maryland law, and in separating such actions from the class of those limited to twelve years under Maryland law, must in doing so have made a reasonable classification.

Since statutes of limitations are designed "to afford security against stale demands, after the true state of the transactions may have been forgotten", *Bell v. Morrison*, 1 Peters 351, 360, it is appropriate for a legislature, in determining the period to which an action should be limited, to take into account the durability of the evidence on which the proof of such an action usually depends. In this respect it is obvious that an action under the Fair Labor Standards Act is reasonably classified with the actions which Article 57, Section 1, limits to three years. These actions, trespass, detinue, trover, replevin, account, contract, debt, case, etc., frequently depend upon parol evidence or upon informal writings not drawn with the care to avoid dependence on extrinsic evidence which is usual in the case of sealed instruments. As Judge SOPER observed in the opinion in this case below, (Petitioner's Appendix, page 21) proof of a claim under the Fair Labor Standards Act is often similarly dependent on perishable evidence. The decision below, therefore, found it clearly within the

power of the legislature to take cognizance of this similarity and to limit a Fair Labor Standards Act action to the same period as that applicable to a suit for wages, due by contract, under the common law of Maryland.

Manifestly, there is here no such unreasonable and arbitrary inequality as to deny the equal protection of the laws. Compare *Radice v. New York*, 264 U. S. 292, 296; *Madden v. Kentucky*, 309 U. S. 83, 88.

CONCLUSION.

For the reasons submitted, it is respectfully urged that the petition for the writ of certiorari should be denied.

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